



Agricultural Marketing Service

7 CFR Part 932

[Doc. No. **AMS-SC-20-0102; SC21-932-1 FR**]

Olives Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements a recommendation from the California Olive Committee to increase the assessment rate for the 2021 fiscal year. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Bianca Bertrand, Management and Program Analyst, or Gary D. Olson, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559)356-8202 or email: BiancaM.Bertrand@usda.gov or GaryD.Olson@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, or email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, implements an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement and Order No. 932, as amended (7 CFR part 932), regulating the handling of olives grown in California. Part 932 (referred to as the "Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The California Olive Committee (Committee) locally administers the Order and is comprised of producers and handlers of olives operating within the production area.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This rule has been reviewed under Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined this rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, California olive handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate be applicable to all assessable olives for the 2021 fiscal year and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such a handler is afforded the opportunity for

a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the current assessment rate from \$15.00 per ton of assessable olives to \$30.00 per ton of assessable olives for the 2021 fiscal year and subsequent fiscal years. The marketing year runs August 1 through July 31.

The Order authorizes the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Members are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus able to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting and all directly affected persons have an opportunity to participate and provide input.

For the 2020 fiscal year and subsequent fiscal years, the Committee recommended, and USDA approved, an assessment rate of \$15.00 per ton of assessable olives. That assessment rate will continue in effect until modified,

suspended, or terminated by USDA upon recommendation and information submitted by the Committee, or other information available to USDA.

The Committee met on December 8, 2020, and unanimously recommended expenditures of \$1,151,832 and an assessment rate of \$30.00 per ton of assessable olives handled for the 2021 fiscal year and subsequent fiscal years. In comparison, last year's budgeted expenditures were \$1,035,406. The assessment rate of \$30.00 is \$15.00 higher than the rate currently in effect. Handlers received 23,193 tons of assessable olives for the 2020 crop year. This is substantially less than the volume for the 2019 crop year, which was 81,689 tons of assessable olives.

The Committee recommended increasing the assessment rate due to the smaller crop. The assessment rate and funds from the Committee's authorized financial reserve is expected to cover the Committee's budgeted expenses for the 2021 fiscal year. Funds in the reserve are expected to remain within the maximum permitted by the Order.

The Order has both a fiscal year and a crop year that are independent of each other. The crop year is a 12-month period that begins on August 1 of each year and ends on July 31 of the following year. The fiscal year is the 12-month period that begins on January 1 and ends on December 31 of each year.

Actual crop year receipts, along with the proposed budget, are used to determine the assessment rate for the following fiscal year. Olives are an alternate-bearing crop, with a small crop followed by a large crop. Therefore, the Committee expects fluctuations in the assessment rate.

Major expenditures recommended by the Committee for the 2021 fiscal year include \$531,300 for general administration expenses, \$334,532 for research, \$238,000 for marketing expenses, and \$48,000 for inspection expenses. Budgeted expenses for these items for the 2020 fiscal year were \$631,300, \$225,606, \$123,500, and \$55,000, respectively.

The Committee derived the recommended assessment rate by considering anticipated fiscal year expenses, actual olive tonnage received by handlers during the 2020 crop year, and the amount of funds available in the authorized reserve. Income derived from handler assessments, calculated at \$695,790 (23,193 tons assessable olives multiplied by \$30.00 assessment rate), along with funds from the Committee's authorized reserve of \$456,042, will be adequate to cover budgeted expenses of \$1,151,832 for the 2021 fiscal year.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended,

or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. Dates and times of Committee meetings are available from the Committee or USDA.

Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2021 fiscal year budget, and those for subsequent fiscal years, will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued

pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 800 producers of olives in the production area and 2 handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$1,000,000, and small agricultural service firms have been defined as those whose annual receipts are less than \$30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), the national average producer price for olives for the 2020 crop year was \$791.00 per ton, and total assessable volume for the 2020 crop year was 23,193 tons. The total 2020 value of the olive crop was \$18,345,663 (23,193 tons times \$791.00 per ton). Dividing the crop value by the estimated number of producers (800) yields an estimated average receipt per producer of \$22,932. Thus, the majority of olive producers may be classified as small agricultural producers.

Based on information from the Committee regarding the volume handled by each handler, neither handler can be classified as a small agricultural service firm. Both handlers may be classified as large entities under the SBA's definition because their annual receipts are greater than \$30,000,000.

As noted above, the average price received per ton by producers in the preceding crop year was \$791.00 per ton of assessable olives. Given the total crop received by handlers of 23,193 tons, the total producer revenue is expected to be \$18,345,663. The total assessment revenue is expected to be \$695,790 (23,193 tons times \$30.00 per ton). Thus, the total assessment revenue compared to total producer revenue is 0.038 percent.

This rule increases the assessment rate collected from handlers for the 2021 fiscal year and subsequent fiscal years from \$15.00 to \$30.00 per ton of assessable olives. The Committee unanimously recommended 2021 expenditures of \$1,151,832 and an assessment rate of \$30.00 per ton of assessable olives. The assessment rate of \$30.00 per ton of assessable olives is \$15.00 higher than the current rate. The volume of assessable olives from the 2020 crop year is estimated to be 23,193 tons. Thus, the \$30.00 per ton assessment rate should provide \$695,790 in assessment income (23,193 tons assessable olives multiplied by \$30.00 assessment rate). Income derived from handler assessments, along with funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses for the 2021 fiscal year.

Major expenditures recommended by the Committee for the 2021 fiscal year include \$531,300 for general administration expenses, \$334,532 for research, \$238,000

for marketing expenses, and \$48,000 for inspection expenses. Budgeted expenses for these items in the 2020 fiscal year were \$631,300, \$225,606, \$123,500, and \$55,000, respectively.

The Committee recommended increasing the assessment rate to provide adequate income to cover the Committee's budgeted expenses for the 2021 fiscal year while maintaining its financial reserve within the requirements of the Order.

Prior to arriving at this budget and assessment rate recommendation, the Committee received information from its Executive, Marketing, and Research subcommittees. At each subcommittee meeting, the members discussed various alternatives to both the assessment rate and programs under their purview. Subcommittees deliberated alternatives relative to their needs and the costs of the programs they oversee. The Research subcommittee, for example, discussed production research proposals, their relative values, whether costs associated with each project was appropriate, whether the project was appropriate in scale, and whether the project met industry's needs. These types of deliberations are part of the annual discussion held by each subcommittee. Subcommittees then report their conclusions and recommendations to the Committee.

Given all the information available to the Committee and its own deliberations, the Committee made a

recommendation to USDA on the assessment rate and the proposed budget.

This rule increases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some portion of assessments may be passed on to producers. However, these costs are expected to be offset by benefits derived by the operation of the Order.

Various subcommittees' meetings and the Committee's meeting were widely publicized throughout the California olive industry. All interested persons were invited to attend meetings and encouraged to participate in deliberations. Like all meetings, subcommittee meetings held on November 5, 2020 and the full Committee meeting held on December 8, 2020, were public meetings and all entities, both large and small scale, were able to express views on this issue. Finally, interested persons were invited to submit comments on this rule, including regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the OMB and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes in those requirements are necessary as a result of this rule. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small- or large-scale California olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on April 8, 2021 (86 FR 18216). Copies of the proposal were provided by the Committee to members and handlers. Finally, the proposed rule was made available through the internet by USDA and the Office of the Federal Register. A 45-day comment period ending May 24, 2021, was provided to allow interested persons to respond to the proposal. No comments were received. Accordingly, no changes were made to the rule proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the

compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932 – OLIVES GROWN IN CALIFORNIA.

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 932.230 is revised to read as follows:

§ 932.230 Assessment rate.

On and after January 1, 2021, an assessment rate of \$30.00 per ton is established for California olives.

Erin Morris, Associate Administrator.
Agricultural Marketing Service.